IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.04.2015

CORAM

The Hon'ble Ms. Justice K.B.K.Vasuki

C.R.P.NPD.No.1093 of 2004
and
C.M.P.No.10803 of 2004

1. Government of India,
   rep. by Secretary to Government of India,
   Ministry of Home Affairs (UT) New Delhi,

2. Union of India,
   rep. by Chief Secretary,
   Government of Puducherry, Beach Road,
   Puducherry.

3. Union of India,
   rep. by Director of Public Works Department,
   Lal Bahadur Street, Puducherry.

4. Union of India,
   rep. by the Director of Local Administration Department,
   Evache Street, Puducherry.

5. Union of India,
   rep. by the Regional Executive Officer,
   Administrator Government House, Mahe.

6. Mahe Municipal Council,
   rep. by Commissioner, Mahe Municipality,
   Municipal Complex, Mahe.

7. Government of Puducherry,
rep. by Secretary, Government of Puducherry,
Chief Secretariat, Beach Road,
Puducherry. ...Petitioners

Vs.

St. Theresa's Roman Catholic Church Mahe
rep. by its Parish Priest,
Rev. Fr.Jose Pulikathara. ...Respondent

This Civil Revision Petition is filed to set aside the order, dated 15.03.2004, passed in I.A.No.287 of 2002, in O.S.No.43 of 1997 on the file of the Sub Court, Mahe.

For Petitioners : Mr.A.Tamilavel
Government Advocate (Puducherry)

For Respondent : Mr.V.Ayyadurai

O R D E R

This Civil Revision Petition is filed by the defendants 1 to 7 in O.S.No.43 of 1997 on the file of the Sub Court, Mahe, against the order, dated 15.03.2004, passed in I.A.No.287 of 2002, whereby, the plaintiff/respondent is permitted to amend the plaint by incorporating new prayer for alternative relief for recovery of possession.

2. The respondent/plaintiff has filed the said suit for following reliefs:-

a) The property described in the schedule to the plaint belongs to the plaintiff and that the defendants will have no right, title or possession over the plaint schedule property.

b) Restraining the sixth defendant (Mahe Municipal Council) by a permanent injunction from entering and erecting stalls, or any other structure, temporary of permanent, or permitting others to erect or construct stalls, temporary or permanent, and auctioning them during the Mahe Festival season or at any time

c) Declaring that the peaceful possession of the Church over OS 187 should not be disturbed by the defendants in any manner.

and

d) Declaring that the mutations or alterations in the records of the defendants, if any, contrary and detrimental to the rights/title/interest and possession of the plaintiff Church are not binding on the Church.

3. The plaintiff has come with the suit for the reliefs, as stated supra, on the ground that the suit property has been in possession and enjoyment of the plaintiff Church from 1736 onwards, and they have perfected title in the schedule mentioned property by long, open, continuous and unencumbered possession for more than 250 years, and their possession is also accepted by all, including the defendants/Officials. Whereas, the defendants/Officials are attempting to erect stalls and to auction the same to affect the rights of the plaintiff Church and they have also been attempting to make alteration in the documents, such as cadastral records, without notice to the owner or occupier, and the same is likely to infringe the rights already vested on the plaintiff Church in respect of the suit property.

4. During the pendency of the suit, the plaintiff has come forward with an application in I.A.No.287 of 2002 for amending the plaint by inserting the following prayer as D1:-

> D1. If, for any reason, this Court is of the view that by the alleged correction of cadastral records illegally by the defendants has in any way effected the actual possession of the plaint schedule

property with the plaintiff, alternatively prays for a decree of recovery of possession of the plaint schedule property from the defendants.

5. It is contended by the applicant/plaintiff in the affidavit filed in support of the application that they came to know about the corrections made in the Village records as if, they are not in possession of the plaint schedule property only from the averments stated in the written statement and the corrections made so far are illegal in nature and the same are against the principles of natural justice and will not bind the plaintiff.

6. The application was opposed by the respondents/defendants by filing counter statement with serious objections.

7. Though the Trial Court, by the impugned order, dated 15.03.2004, ordered amendment, on the basis of its findings that neither the cause of action, nor the scope of the suit, is likely to be changed by reason of proposed amendment of the plaint, and the issues regarding possession can be decided at the time of trial, and the amendment is not likely to cause

inconvenience to the other side, and the amended relief may be decided on merits in the main suit. Aggrieved by the same, the defendants have filed the present Civil Revision Petition.

8. It is contended by the learned Government Advocate (Puducherry) for the petitioners herein that the proposed amended relief is barred by law of limitation and the same is also barred under the Pondicherry Settlement Act, 1970, in and by which, the suit challenging any correction in the records is not maintainable.

9 Heard the rival submissions made on both sides.

10. Though the learned Government Advocate (Puducherry) appearing for the petitioners/defendants have raised more than one grounds in this Revision against the correctness of the impugned order, he would only seriously press into service the objection regarding the maintainability of the suit against the so-called corrections made in the revenue records, which is according to the respondent Church is illegal and is in violation of the principles of natural justice and is not binding on them. This Court,

considering the nature of amendment sought for, which is one for adding alternative prayer for recovery of possession of the suit property, and considering the findings of the Trial Court on the basis of the pleadings that the possession now lies with the sixth defendant/Municipality, is of the view that, in the event of amendment being ordered, the issue to be decided is as to whether the plaintiff is entitled to recovery of possession or not. Other aspects regarding the illegality of the corrections, if any, made is incidentally raised by the plaintiff in the suit. Even otherwise, the defendants/Officials are, if the amendment being ordered is by filing an additional written statement, at liberty to raise all technical and legal objections against the newly added relief and that the defendants/Officials are in no way affected by the amended prayer, as such, this Court is not inclined to interfere with the impugned order of the Trial Court.

11. In the result, the Civil Revision Petition is dismissed, with liberty given to the defendants/officials, after the amendment is carried out, to file additional written statement, raising all the legal and factual objections, available to them, against the newly added prayer and the Trial

Court is directed to decide all the reliefs, raised in the suit on merits in the light of pleadings and additional written statement if any by respective parties and in the light of the entire evidence adduced by them. The Trial Court is directed to dispose of the suit as expeditiously as possible, by not later than six months from the date of receipt of copy of this order. No costs. Consequently, connected M.P.is closed.

17.04.2015

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Index : yes/No

To

The Sub Judge, Mahe.

K.B.K.Vasuki, J.

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